Nixon, Aides To Pay $5 in Wiretap Case

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Former President Richard M. Nixon, top Nixon aide H. R. (Bob) Haldeman, and former Attorney General John N. Mitchell must pay a total of $5 in damages to a former National Security Council aide and four members of his family for an illegal wiretap on their home.

U.S. District Judge John Lewis Smith Jr., who had earlier found that the three former top government officials had violated the constitutional rights of former NSC aide Morton Halperin and his family, said only nominal damages were awarded because Halperin himself had conceded that the illegal taps had not cost him any loss of employment or income.

The ruling is believed to mark the first time that a former President has been forced to pay damages to a private citizen for acts he committed while in office. Nixon admitted approving the taps on Halperin's home telephone but said it was necessary for the "national security" while the government searched for the source of alleged leaks of classified information.

Yesterday's decision was limited to the question of damages. In a ruling last December, Smith found that Nixon and the other defendants were liable for their actions and were just "like any other citizen(s)" when it comes ot lawsuits. "These officials are

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MORTON HALPERIN
. . . calls award insufficient

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charged with knowledge of established law and must be held accountable for personal misconduct," the judge said.

Halperin and his attorney, American Civil Liberties Union lawyer Mark Lynch, said they would appeal the ruling because they did not feel the damage award was sufficient to deter similar illegal acts by governmen officials in the future.

Otherwise, they said, they were pleased with the outcome of the case because they felt it "vindicated" Halperin's reputation for loyalty and integrity.

The judge specifically ordered that notations be made in Halperin's security file with the government that the taps had not shown he had leaked any information to the press, for example.

However, Smith refused to issue an order blocking Nixon, Mitchell and Haldeman from approving future illegal wiretaps or disclosing information from the past wiretap.

"Mr. Haldeman and Mr. Mitchell are in prison," Smith said. "Mr. Nixon is in voluntary seclusion and is prohibited by the 22d Amendment from regaining the office of President. Consequently, the proposed relief is unnecessary."

Halperin was one of 17 government officials or newsmen whose telephones were tapped by the Nixon administration beginning in May, 1969, in an attempt to determine the sources of apparent leaks of classified information to the press.

The tap on Halperin's home telephone remained in place for 21 months, long after he left the government and began working as an adviser in the Democratic presidential campaign.

The length of the tap was the main reason given last December by Judge Smith for ruling that Halperin's constitutional rights had been violated. Smith said the actions and inactions of the three top government officials had permitted the surveillance to develop into a "dragnet which lacked temporal and spatial limitations."

"The evidence here reflects a 21-month wiretap continuance without fruits or evidence or wrongdoing, a failure to renew or evaluate the material obtained, a lack of records or procedural compliance, a seemingly political motive for the later surveillance and dissemination of reports, and an apparent effort to conceal the wiretap documents," Smith ruled last December.

However, Smith ruled yesterday that despite the illegal acts by the government officials he did not believe punitive damages were appropriate. He gave as his reason the view that there was "justifiably grave concern in early 1969 over the leaking of confidential policy information."

"Despite the court's rejection of defendants' good faith defense, their conduct cannot fairly be characterized as a wanton, reckless or malicious disregard of plaintiffs' rights justifying the imposition of punitive sanctions," Smith said yesterday.

His order directs the three defendants to pay Halperin, his wife, and their three children $1 each. Documents failed earlier in the suit showed that many of the calls intercepted involved Halperin's family members instead of him.

Halperin was one of the first government officials wiretapped under the Nixon administration's program. His home telephone remained tapped from May, 1969, until February, 1971, despite objections from some FBI officials that the tap was a waste of manpower.

Subsequently, files concerning the wiretap program were removed from the FBI's custody and kept in a safe in the White House office of domestic affairs adviser John D. Ehrlichman.

The government's failure to produce the documents concerning the wiretap led to the dismissal of the criminal case involving antiwar activist Daniel Ellsberg's release of the Pentagon Papers. This was because Ellsberg had been picked up on the undisclosed tap on Halperin's telephone.

Halperin filed his suit in June, 1973, on constitutional grounds, as well as on the grounds that the wiretap was in violation of a 1968 federal wiretap criminal statute. Under the wiretap statute, Halperin asked for damages of $100 a day for the duration of the tap.

The evidence gathered during the suit by Halperin and his attorney provided the most detailed public look ever at the manner in which the nation's law enforcement machinery operates in the murky area of "national security."

Numerous high-ranking government officials, including Nixon himself, were forced to testify under oath about their roles in the wiretap programs and there were often conflicts over who did what and when.

Nixon said former Secretary of State Henry Kissinger was responsible for selecting the tap targets, and that the late FBI director J. Edgar Hoover was responsible for carrying out the eavesdropping.

However, Kissinger said that his role was much less than that portrayed by Nixon. But several other witnesses said that they considered the wiretaps as being under Kissinger's control and direction.

Smith accepted Kissinger's version of his role and dismissed him as a defendant in the case last December. Smith also dismissed the suit against numerous other former high-ranking government officials and the C&P Telephone Co.

Smith's ruling last December was the first time that a federal court has found that Nixon personally committed illegal acts that violated the U.S. Constitution. The former President was pardoned by President Ford for any criminal violations he might have committed during his administration.

Nixon's attorneys said yesterday they would have no comment on the ruling at this time.